IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6219 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

LAXMI JARI TRADERS

Versus

HIRALAL K RANA

Appearance:

1. Special Civil Application No. 6219 of 1993

MR PC MASTER for Petitioner No. 1

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE D.K.TRIVEDI

Date of decision: 04/10/2002

ORAL JUDGEMENT

1. The petitioner has challenged the order passed by the Presiding Officer, 2nd Labour Court, Surat dated 3.5.93 passed in Misc. Application No.134/90 filed by

the petitioner - original opponent praying for restoration of the Recovery Application being Recovery Application No.280/90 and praying for setting aside the ex parte order passed by the Presiding officer, 2nd Labour court, Surat dated 11.10.90 while deciding the Recovery Application No.280/90. It is the case of the petitioner that the Presiding Officer of the Labour court has committed error in rejecting the Application for restoration, which was based on medical ground and while deciding the said Application, the Presiding Officer has not accepted the case of the petitioner in respect of the case put forward by the petitioner for not remaining present before the court on the medical ground and the Presiding Officer has committed error in rejecting the Application for setting aside the ex parte order passed by the Presiding Officer of the Labour Court while deciding Recovery Application filed by the respondent, which was decided ex parte.

2. The respondent in the present case, though served, has chosen not to participate in these proceedings.

3. Mr.Master, the learned advocate appearing on behalf of the petitioner, has taken me through the original order passed by the Presiding Officer, 2nd Labour Court, Surat dated 11.10.90 wherein the Labour court has ex parte granted the Application of the respondent while deciding the Recovery Application No.280/90 in favour of the respondent, wherein the Labour Court has allowed the Recovery Application of the respondent wherein the petitioner was directed to pay a sum of Rs.26140/-- to the original applicant within 30 days from the date of the order and further awarded a sum of Rs.150/-- towards costs of the Application. It is the contention of Mr. Maser that the Presiding Officer has failed to appreciate the fact that there was no relation of master and servant or employer and employee between the parties in view of the admission made by the original claimant before the Presiding Officer. As found, the Labour Court has even while considering the Application for setting aside the ex parte order, not accepted the case of the petitioner, which is based on medical ground and the Presiding Officer has observed that no sufficient cause is shown for not appearing before the Court and the Court has further observed that the petitioner has received the notice of the court and inspite of that he has chosen not to remain present and further observed that the approach of the petitioner is to watch the proceedings and if the Recovery Application is granted in favour of the original applicant, then and then he can

challenge the said order by filing restoration Application and unnecessarily to delay in making payment to the respondent workman. The Medical Certificate attached with the Application for setting aside the ex parte order shows that the petitioner was not well between 2.7.90 and 17.7.90 on the ground of illness of dysentery and further from 23.9.90 to 1.10.90 the petitioner was suffering from Malaria. Certificate is on the record with list Exh.19. The Presiding Officer has while discarding the said Certificate observed that the petitioner has failed to prove the said certificate by not examining the Doctor. As found from the evidence of the petitioner, the petitioner has deposed that he was not well during the above period and he was under medical treatment for which the medical certificates were produced.

4. The petitioner has challenged this order passed by the Presiding Officer and as per order dated 24.8.95, the Division Bench has passed the following order:-

"Rule. As regards interim relief it is directed that the petitioner shall deposit an amount of Rs.26,140-00 [Rupees Twenty Six Thousand One Hundred and Forty only] in the office of the High court latest by September 6, 1993. On deposit of the amount, the implementation of the order of recovery passed by the Labour Court shall remain stayed. If the amount is not deposited, the stay granted herein shall stand automatically vacated.

On deposit of the amount, the other side will be at liberty to withdraw the same on furnishing security to the satisfaction of the Registrar of this Court and on filing an undertaking that in case the respondent loses and is required to restore the amount to the petitioner, he shall restore the same to the petitioner as per the directions that may be given by this Court at the time of final hearing."

5. As observed earlier, the respondent was duly served. Mr.Master has also during hearing produced the receipt to show that as per the order passed by the Court earlier, the petitioner has already deposited the amount with Registry of this court. As found,there is nothing in the petition nor in the Farad to show that whether any amount has been withdrawn as per the order passed by the court and accordingly the inquiry was made with the Nazir of this court. It is reported that the petitioner has deposited the amount of Rs.26140/-- and the same is still

not withdrawn by the respondent and the same is lying in Current Account in the name of Registrar.

6. Examining the order under challenge and as found from the order passed by the Presiding Officer on an application filed by the petitioner for seeking restoration of the Recovery Application, the learned Presiding Judge has while rejecting the said application observed that the petitioner has failed to prove the medical certificates produced on the record of the case by not examining the Doctor though sufficient time was granted. However, as found from the deposition of the petitioner, which is at Exh.17, it is his case that due to illness he could not remain present before the court,for which he has also produced medical certificate alongwith list at Exh.19. The medical certificate shows that on account of dysentery he was under treatment of the Doctor from 2.7.90 to 17.7.90 and thereafter the petitioner was suffering from Malaria and he was under medical treatment of the Doctor from 23.9.90 to 1.10.90. It is further found that when in the Recovery Application filed by the respondent notice was issued, petitioner has engaged advocate to represent his case before the Labour Court and the representative of the respondent has objected and thereafter the matter was adjourned. Rojkam of Recovery Application No.280/90 shows that after the filing of the Application by the respondent, notice for hearing was fixed on 6.7.90 and on 6.7.90 as no appointment of Presiding Officer was made, Recovery Application was adjourned to 23.8.90. On 23.8.90 as per Exh.5, the defence of the petitioner was closed and as per Application Exh.6, the original applicant has objected to representation through lawyer and due to Resolution passed by the Bar Association, the Recovery Application was adjourned to 19.9.90. On 19.9.90 when the case was called out, non appeared for the opponent and the case was fixed for recording of evidence on 25.9.90. On 25.9.90 evidence of original applicant was recorded at Exh.7 and non appeared for the petitioner. During recording of the evidence of the applicant, he has produced the list of documents and these documents are on the record of the case at Exh.9 to Exh.13 and under Exh.14 the respondent original applicant has filed closing Purshish and thereafter the Presiding Officer has decided the Recovery Application ex parte as per order dated 11.10.90. The fact remains that the Recovery Application filed by the respondent herein was decided by the learned Presiding Officer ex parte and subsequently Misc. Application for restoration of the Application as well as for setting aside the ex parte order was filed by the petitioner on the medical ground, which was rejected.

7. Considering the submission made before me and on examining the order, this court is of the view that the Presiding Officer ought to have relied upon the evidence of the petitioner when he has deposed before the Court that he was not in a position to attend the court proceedings on the ground of illness for which he has also produced document, namely, medical certificate issued by Doctor covering the period from 2.7.90 to 17.7.90 and thereafter from 23.9.90 to 1.10.90. The Presiding Officer ought to have relied upon the evidence of the petitioner by holding that the petitioner was not well and because of his illness he could not remain present. Accordingly the order passed by the Presiding Officer on 3.5.93 deserves to be set aside and accordingly Application for setting aside the ex parte order passed by the Presiding Officer on 11.10.90 in Recovery Application No.280/90 deserves to be restored and the Presiding Officer, 2nd Labour Court, Surat is directed to decide Recovery Application being Recovery Application No.280/90 filed by the respondent in accordance with law, as early as possible, as the proceedings are of the year 1990, by offering opportunity of hearing to the petitioner herein. The petitioner is permitted to submit his defence.

8. Though the petitioner has deposited the amount of Rs.26,140/-- in this court and inspite of the order for withdrawal of the said amount on furnishing security to the satisfaction of the Registrar and even by filing undertaking, the original workman has not withdrawn the same and the amount is lying idle. Accordingly Registry of this court is directed to transmit the said amount forthwith to the Labour Court, Surat and the Labour Court, Surat is directed to invest the said amount with a Nationalized Bank at least for a period of one year and pass appropriate orders while deciding the Recovery Application No.280/90.

9. Rule is made absolute in the above terms. However, there will be no order as to costs.

(D.K.Trivedi,J)

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